



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R06-OAR-2018-0675; FRL-9985-91-Region 6]

Air Plan Approval; Texas; Reasonably Available Control Technology

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) is proposing to convert its September 22, 2017 conditional approval of revisions to the Texas State Implementation Plan (SIP), addressing Oxides of Nitrogen (NO_x) Reasonably Available Control Technology (RACT) for the TXI Operations, LP (Texas Industries, Inc., TXI) cement manufacturing plant in Ellis County, to full approval. The August 21, 2018 SIP submittal satisfies Texas' commitment which was the basis for our conditional approval of NO_x RACT for this plant. Final approval of this SIP submittal will convert our earlier conditional approval to full approval. We are taking this action in accordance with the Clean Air Act (CAA, the Act) requirements.

DATES: Comments must be received on or before **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit your comments, identified by Docket No. EPA-R06-OAR-2018-0675 at <http://www.regulations.gov> or via email to shar.alan@epa.gov. Follow the online instructions for submitting comments. Once submitted, comments cannot be edited or removed from Regulations.gov. The EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions

(audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. The EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact Mr. Alan Shar, (214) 665-6691, shar.alan@epa.gov. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <http://www2.epa.gov/dockets/commenting-epa-dockets>.

Docket: The index to the docket for this action is available electronically at www.regulations.gov and in hard copy at the EPA Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas. While all documents in the docket are listed in the index, some information may be publicly available only at the hard copy location (e.g., copyrighted material), and some may not be publicly available at either location (e.g., CBI).

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar (6MM-AA), (214) 665-6691, shar.alan@epa.gov. To inspect the hard copy materials, please schedule an appointment with Alan Shar.

SUPPLEMENTARY INFORMATION:

Throughout this document “we,” “us,” and “our” refer to EPA.

Outline

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I. Background

As a part of its July 10, 2015 Dallas Fort Worth (DFW) SIP submittal, TCEQ conducted RACT analyses to demonstrate that the RACT requirements for affected NO_x sources in the DFW 2008 8-Hour Ozone nonattainment area have been satisfied, relying on the NO_x RACT rules EPA had previously approved for the DFW area for its classification as Serious for the 1997 8-Hour Ozone standard. See March 27, 2015 (80 FR 16292), and 40 CFR 51.1112. The RACT analysis is contained in Appendix F of the TCEQ July 10, 2015 SIP submittal as a component of the DFW 2008 8-Hour Ozone attainment demonstration plan. On September 22, 2017, we conditionally approved NO_x RACT for the TXI cement manufacturing plant in Ellis County, and fully approved NO_x RACT for all other affected sources in the ten county DFW 2008 8-Hour Ozone nonattainment area.

On August 21, 2018 TCEQ submitted a revision to Texas SIP addressing NO_x RACT for the TXI cement manufacturing plant in Ellis County as a part of its DFW 2008 8-Hour Ozone National Ambient Air Quality Standards (NAAQS) SIP update. The August 21, 2018 SIP submittal contains both an Agreed Order (AO) concerning TXI and a SIP narrative for DFW NO_x RACT.

A. RACT and the RACT requirements relevant for this action

Section 172(c)(1) of the Clean Air Act (CAA, Act) requires that SIPs for nonattainment areas “provide for the implementation of all reasonably available control measures as expeditiously as practicable (including such reductions in emissions from existing sources in the

area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall provide for attainment of the primary National Ambient Air Quality Standards (NAAQS).” The EPA has defined RACT as the lowest emissions limitation that a particular source is capable of meeting by the application of control technology that is reasonably available, considering technological and economic feasibility.¹

Section 182(b)(2) of the Act requires states to submit a SIP revision and implement RACT for major stationary sources in moderate and above ozone nonattainment areas. For a Moderate, Serious, or Severe area, a major stationary source is one that emits, or has the potential to emit, 100, 50, or 25 tons per year (tpy) or more of VOCs or NO_x, respectively.² The DFW area was classified as Serious on December 20, 2010 (75 FR 79302). Ellis County is one of the ten Counties constituting the DFW 2008 8-Hour Ozone nonattainment area. Thus, per section 182(c) of the CAA, a major stationary source in the DFW area, is one which emits, or has the potential to emit, 50 tpy or more of VOCs or NO_x. The TXI cement manufacturing plant in Ellis County is a major source of NO_x, and subject to RACT.

The terms “TXI Operations, LP”, “TXI”, “Martin Marietta”, and “MM” are used interchangeably in this action.³

The EPA provides states with guidance concerning what types of controls could constitute RACT for a given source category through the issuance of Control Technique Guidelines (CTG) and Alternative Control Techniques (ACT) documents.⁴

B. Conditional approval

¹ September 17, 1979 (44 FR 53761).

² CAA sections 182(b), 182(c), and 182(d).

³ Index of written testimony, Reference number W-1, August 21, 2018 SIP submission.

⁴ See <http://www.epa.gov/airquality/ozonepollution/SIPToolkit/ctgs.html>.

Under section 110(k)(4) of the Act, the Administrator may approve a plan revision based on a commitment of the State to adopt specific enforceable measures by a date certain, but not later than 1 year after the date of approval of the plan revision. Any such conditional approval shall be treated as a disapproval, if the State fails to comply with such commitment.

The EPA conditionally approved NO_x RACT for the TXI cement manufacturing plant in Ellis County on September 22, 2017 (82 FR 44320), with an effective date of October 23, 2017.⁵ The RACT determination action was based on the State's written commitment to EPA that through an AO or rulemaking action, between TCEQ and TXI, certain conditions of their air permit, concerning the NO_x emission limitation of 1.95 lb/ton of clinker produced from kiln #5, would be incorporated into a forthcoming revision to the Texas SIP.⁶ This SIP revision was necessary so that the emission limit relied upon to implement NO_x RACT would be part of the Texas SIP. The forthcoming revision to the Texas SIP was to be submitted to EPA no later than one year from the effective date of final conditional approval of the NO_x RACT for kiln #5, or no later than October 23, 2018. See section 110(k)(4) of the CAA.

The August 21, 2018 SIP submittal was provided to fulfil TCEQ's written commitment to EPA. RACT for the TXI cement kiln #5 is fulfilled by an AO⁷ which is included in the SIP submittal and will become part of the SIP, if EPA finalizes this proposed approval. The scope of this rulemaking action is strictly limited to evaluating the SIP revision, including the AO, and whether it meets the requirements of the conditional approval. The AO includes incorporation of certain TXI's New Source Review (NSR) SIP permit conditions (Specific Conditions 3.A(1) - (3) of NSR Permit 1360A(PSDTX632M1)) such that the AO stands on its own and insures the

⁵ EPA Docket No. EPA-R06-OAR-2015-0496 available at www.regulations.gov.

⁶ July 29, 2016 letter at www.regulations.gov document ID No. EPA-R06-OAR-2015-0496-0035.

⁷ TCEQ Docket No. 2017-1648-SIP, Agreed Order.

necessary requirements will become a part of the Texas SIP. No further RACT review or determination is being conducted here. Comments concerning the area's ozone attainment demonstration plan, or review of NO_x RACT are beyond the scope of this rulemaking action.

II. Evaluation

As a part of our July 19, 2017 proposal (82 FR 33026) and September 22, 2017 final (82 FR 44320) rulemaking actions we, among other things, determined the NO_x emission limitations and control requirements in Appendix F meet RACT for each cement manufacturing plant in Ellis County, including the TXI cement manufacturing plant in Ellis County.⁸

As a part of our RACT determination at 82 FR 44320, we found that emission limitations and control requirements for the TXI plant contained in certain terms of TXI's air permit, including the NO_x emission limitation of 1.95 lb/ton of clinker are consistent with our guidance and ACT documents, and meet the lowest emission limitation through application of control techniques that are reasonably available considering technological and economic feasibility. The air permit, however, is not part of the SIP. Therefore, our approval was *conditioned* on certain terms of the permit being approved by EPA as a source-specific SIP revision. TCEQ committed to address the referenced terms of TXI's air permit through rule revision or an AO in a SIP revision, and submit that SIP to the EPA as a revision to its NO_x RACT SIP no later than October 23, 2018. See section 110(k)(4) of the Act (conditional approval). As stated above, the August 21, 2018 SIP submittal satisfies that commitment.

The August 21, 2018 SIP submittal consists of an AO which states that the kiln #5 NO_x CEMS is subject to the provisions in 30 TAC section 117.3140(b), 40 CFR section 60.13, 40

⁸ Technical Support Document (TSD) ID No. EPA-R06-OAR-2015-0496-0036 at www.regulations.gov.

CFR 60 Appendix B, Performance Specification 2, and is subject to audits in accordance with section 5.1 of Appendix F Quality Assurance Procedures.⁹

The kiln #5 stack exhaust flow rate is subject under the AO to 30 TAC section 117.3142(a)(2), which requires monitoring with a flow meter subject to 40 CFR Part 60 Appendix B, Performance Specification 6 or 40 CFR part 75 Appendix A.¹⁰

Pursuant to the AO, the TXI must monitor and record clinker production rates, in tons per hour, tons per day, daily summed on a 30-day rolling basis, and monthly summed on a 12-month rolling basis. Hourly and daily clinker production rates may be based on the previous month's feed-to-clinker ratio multiplied by the measured hourly/daily kiln feed rate, as specified in 40 CFR 60 subpart F section 60.63(b). Records in units of lb NO_x/ton of clinker produced are maintained on a 30-day rolling average basis.¹¹

The AO also requires that the NO_x emission limit is 1.95 lb NO_x/ton of clinker for kiln #5, on a 30-day rolling average basis. Furthermore, this limit of 1.95 lb NO_x per ton of clinker cannot be revised to be less stringent without an approved revised RACT determination in accordance with the State and Federal requirements for SIP revisions.¹²

The AO states that the Company shall make records available upon request by the TCEQ or any other air pollution control agency with jurisdiction over the Company.¹³

In addition, Special Conditions outlined in Part II, Item #2, subparagraphs 1, 2, and 3 of the AO shall be incorporated in Company's NSR permit 1360A (PSDTX632M1) as they concern the NO_x RACT limit, averaging periods, and NO_x CEMS provisions for kiln #5, respectively.

⁹ Part I, stipulation 16 of the Agreed Order

¹⁰ Id.

¹¹ Id.

¹² Part I, Item #19 of Agreed Order.

¹³ Part II, Item #3 of Agreed Order.

These provisions will provide for consistency between the TCEQ air permit and the federally enforceable NO_x RACT SIP requirements for kiln #5.

The AO has gone through public notice and comment at the State level, and it adopts *specific enforceable measures* in conformance with section 110(k)(4) of the Act.

We find that the submitted AO meets the conditions for full approval and includes all the required provisions to meet the NO_x RACT requirements that EPA approved in the September 22, 2017 final action.

III. Proposed Action

We are proposing to find TCEQ's August 21, 2018 SIP submittal satisfies its obligation under the September 22, 2017 (82 FR 44320) conditional approval, and to convert the September 22, 2017 (82 FR 44320) rulemaking to full approval. We are proposing to approve the August 21, 2018 SIP submittal, including approval of the AO as a source-specific NO_x RACT revision to the SIP.

IV. Incorporation by Reference

In this action, we are proposing to include in a final rule regulatory text that includes incorporation by reference. In accordance with the requirements of 1 CFR 51.5, we are proposing to incorporate by reference revisions to Texas' regulations, as described in the Proposed Action section above. The EPA has made, and will continue to make, these documents generally available electronically through www.regulations.gov and in hard copy at the EPA Region 6 office.

V. Statutory and Executive Order Reviews:

Under the Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Act. Accordingly, this action merely proposes to approve state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a "significant regulatory action" subject to review by the Office of Management and Budget under Executive Order 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);

- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the proposed rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: November 5, 2018.

Anne Idsal,

Regional Administrator, Region 6.

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